

Project Administration Instructions

PAI 3.11
Revised February 2008
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FUNCTIONS AND RULES OF THE PROCUREMENT COMMITTEE

A. Introduction

1. ADB's sector divisions are primarily responsible for monitoring and verifying executing agency (EA) procurement and ensuring that ADB's procurement procedures have been applied. The delegation of authority for procurement to ADB's regional and resident missions (RMs) is established in the respective Operating Guidelines for the missions. The procurement committee is established to ensure consistent and correct application of procurement practices.

B. Composition of the Procurement Committee

2. The procurement committee's members are

- | | |
|---|---------------------|
| • Principal Director, Central Operations Services Office (COSO) | Chair |
| • Assistant General Counsel concerned | Member |
| • Director, sector division concerned | Member ¹ |

3. During the absence of Principal Director, COSO, Director COS1 or COS2 will chair the procurement committee. If Principal Director, COSO, and Directors COS1 and COS2 are absent, the assistant general counsel concerned will chair the committee.

4. Principal Director, COSO, will appoint a principal or senior procurement specialist to serve as the permanent secretary of the procurement committee. In the absence of the permanent secretary, Principal Director, COSO may designate an acting secretary.

C. Matters for Procurement Committee Consideration

5. The following matters are submitted to the procurement committee for decision:

- a proposal or decision to prequalify applicants for contracts estimated at \$10,000,000 or more;
- approval of an EA's evaluation report on technical proposals in case of two-stage or two-envelope bidding procedures, if the estimated contract value is \$10,000,000 or more;
- a proposal or decision to award or rebid a contract valued at \$10,000,000² or more;
- a proposal or decision to cancel bidding for a contract valued at \$10,000,000² or more;
- a case where the borrower's or EA's proposed action conflicts with ADB's normal requirements as specified in the *Procurement Guidelines*, procurement plan or the financing agreement, except changes in method of procurement for which the procedures indicated in PAI 3.01, para. 41 are to be followed;

¹ For projects administered by RMs, the member will be the resident or regional representative of the RM concerned.

² When bids are quoted in currencies other than dollars, the most recent exchange rate is used.

- a proposal or decision that varies the essential terms and conditions that formed the basis of a decision taken previously by the procurement committee (on either a no-objection basis or a formal meeting) in the same case;
- any procurement matter that a regional department deems complicated or has issues requiring broader discussion, irrespective of value; and
- any procurement matter that may be referred to the procurement committee by Management.

Where prior review is prescribed, proposals are to be submitted for approval prior to taking the decision (for example, a proposal to award contract must be approved by the procurement committee before the contract is awarded). Where post review is applied, contracts are to be submitted to the procurement committee prior to disbursement under the contract, or for retroactive review even if the EA has already approved the awards and signed the contracts.

D. Submissions

6. The sector division or RM concerned will prepare detailed and self-contained submissions to enable the procurement committee to make decisions without the need to refer to the sector division or RM concerned. The sector division or RM concerned will be responsible for ensuring that all facts, issues, and representations regarding the particular procurement are accurately and completely reflected and discussed in the submission. The program officer, sector specialist, and project counsel, and members of the procurement committee, as appropriate, are entitled to rely on the completeness and accuracy of the submission in providing their recommendations and/or decision.

1. Submissions on a No-Objection Basis

7. All matters to be considered by the procurement committee are normally acted upon by the committee during a formal meeting. However, the matter can be submitted on a no-objection basis if the recommendations of the originating unit, the procurement specialist, and the project counsel are in agreement. After receiving the submission, any procurement committee member may request that the case be formally discussed at a meeting of the procurement committee. The submission will be written in accordance with the sample in Appendix 1. The submission is to be detailed and self-contained, provide all relevant information, define the issues and representations and address them, and contain a specific recommendation. The recommendation of the borrower or EA must be appended together with the written comments on the proposals of the borrower or EA, from the originating unit,³ procurement specialist, the project counsel.⁴ Copies of any representations received, are also to be attached and addressed in the submission. The originator will circulate the no-objection paper to all members in the following order:

- Originating unit head concerned,
- Assistant General Counsel concerned, and
- Principal Director, COSO.

³ The originating unit covers project divisions, Pacific operations divisions, and regional or resident missions (RMs).

⁴ For projects administered directly by ADB's RMs, the RMs will obtain comments on the proposals of the borrower or EA directly from Office of the General Counsel and COSO, and in appropriate cases, the sector division concerned and the controller's department.

2. Submissions Requiring a Meeting of the Procurement Committee

8. Normally, a meeting would be held to consider a proposal that (i) seeks to vary the essential terms and conditions that formed the basis of a decision taken previously by the procurement committee (on either a no-objection basis or a formal meeting) in the same case; (ii) any procurement matter that is overly complicated or has issues requiring broader discussion as might be requested by the originating unit, the project counsel, or the procurement specialist; or (iii) any procurement matter referred to the procurement committee by Management.

9. The submission is to be written in the format given in Appendix 2 and sent by the originating unit to the chair of the procurement committee with copies to all committee members, the Director of COS1 or COS2, the assistant general counsel concerned, the secretary of the procurement committee and the procurement specialist concerned. The submission must be detailed and self-contained, provide all relevant information, define the issues and representations and address them, and contain a specific recommendation. The borrower's or EA's recommendation and the comments of the consultant, if any, are to be attached together with written comments on the borrower's or EA's proposals by the originating unit, procurement specialist, project counsel, and, if appropriate, the sector specialist or control officer concerned or both. Copies of any representations received must also be attached and addressed in the submission.

3. Cost Comparisons in Submissions

10. Submissions to the procurement committee are to include

- bid prices as opened, discounts offered, corrected bid prices after discounts, loadings applied to the bids, evaluated bid prices, and comparisons with the EA's estimate, and the appraisal estimate;
- the proposed contract amount in equivalent US dollars; and
- engineer's estimate of the cost of goods and related services or works.

This will enable price trends to be followed to forecast costs of future projects and help ascertain the reasonableness of the cost of the goods and related services or works to be procured in relation to the estimates made during appraisal. Appraisal estimates are to show if any provision for price escalation has been included and, if so, account for it in the cost comparisons.

E. Meetings

11. After receiving a copy of the submission, the secretary of the procurement committee will recommend to the chair that a meeting be convened. Normally, at least two working days are required for the members to study the submission before meeting.

12. All members are to be present at meetings. If a member is unable to attend, a representative is to be designated in writing by the member or by the head of the department or office concerned to whom all responsibility and authority of the absent member is to be delegated.

13. If no representative has been designated, the chair may postpone the meeting or proceed without the representative. A meeting will not be held without either the originating unit's member or representative.

14. The chair may permit other ADB staff to be present at a meeting if the staff can provide expert advice on the case to be considered.

F. Procurement Committee Decisions

15. The procurement committee renders its decision only after a unanimous decision is reached. Without unanimity, the chair will refer the matter to the head of the originating department or office to resolve the differences and reach a unanimous decision. If a unanimous decision is still not reached, the head of the originating department or office will refer the case to the vice-president concerned for a decision. The decision thus taken is final. Deliberations of the procurement committee remain confidential even after award of contract. The provisions in para. 17–18 are not applicable in this case.

16. The sector division director, or concerned RM country director, will be responsible for implementing the decision taken.

G. Special Review Procedure

17. A special review of a procurement committee decision on a contract award proposed by the EA will be conducted as an exceptional case when all of the following are met:

- the decision of the procurement committee conflicts with the proposal or decision of the borrower or EA in determining the lowest evaluated substantially responsive bid entitled to award of contract;
- the matter has remained unresolved for more than four months after the procurement committee's decision;
- the estimated value of the contract exceeds \$10,000,000 and the contract involves a major project component; and
- a special review has been requested by the borrower or the vice-president.

18. A special review is conducted by a committee consisting of the heads of the following three departments or offices: COSO, Office of the General Counsel (OGC), and the originating department concerned. The review committee selects a chair and determines procedures for conducting the review in each case. Its decision is by a simple majority and is final.

H. Correspondence with Board Members and Bidders

19. When approval of contract award (pre or post review) lies with the originating unit

- correspondence from Board members or bidders is replied to by the director general, director, or country director of the originating unit;
- the reply is sent after consulting COSO and OGC, if necessary;

- representations from the Board should be coursed through Office of the Secretary to the originating unit; and
- the response, also through the Office of the Secretary, briefly explains the status of issues raised.

20. When the approval of contract award (prior or post review) is taken by the procurement committee,

- the originating unit responds to issues that have not reached the procurement committee, after clearance by COSO and OGC.
- the procurement committee chair, responds to issues that have reached the committee, if necessary after consulting the originating unit.

I. Consulting with Other ADB Staff

21. The first draft prequalification documents and draft bidding documents for a project, regardless of the estimated contract value, are to be submitted by the originating unit for comments by the project counsel, procurement specialist, and, in appropriate cases, the control officer concerned. The project counsel's review will be limited to the specific conditions of contract. Comments should be provided to the originating unit within 5 working days of receipt of the documents. Prior to seeking interdepartmental comments, the originating unit is to review the draft documents to identify discrepancies with standard bidding documents and determine compliance with the *Procurement Guidelines*, the relevant financing agreement, the procurement plan and these PAIs. The originating unit will prepare a memorandum setting out the findings of its review, to accompany the circulation of the draft documents for interdepartmental comments.

22. Review procedures (prior or post review) will be described in the procurement plan. Where post review is used, it is expected that the first set of documents, as reviewed and approved by ADB will be used as a method for subsequent procurement in the same project. Documents for subsequent contracts need not be submitted to a review process. However, the originating unit should obtain copies of documents for all contracts and keep them on file should a special review be necessary.

23. Where prior review is used, draft prequalification documents and draft bidding documents for subsequent contracts estimated at \$10,000,000 or more are submitted by the originating unit for comments by the project counsel, procurement specialist, and, in appropriate cases, the control officer concerned. The project counsel's review will be limited to the specific conditions of contract. Prior to seeking interdepartmental comments, the originating unit is to review the draft documents to identify discrepancies with standard bidding documents and determine compliance with the *Procurement Guidelines*, the relevant financing agreement, the procurement plan and these PAIs. The originating department will prepare a memorandum setting out the findings of its review, to accompany the circulation of the draft documents for interdepartmental comments. All comments should be sent to the originating unit within five working days from the receipt of the documents. The originating unit is to ensure that the prequalification documents and bidding documents issued by the EA incorporate ADB's comments and confirm this to COSO. For contracts under national competitive bidding, the requirements for reviewing the draft prequalification documents and draft bidding documents are shown in PAI 3.04.

24. Prequalification and bid evaluation reports for contracts of \$10,000,000 or more, and all other matters to be considered by the procurement committee in accordance with para. 5 are to be submitted with a draft procurement paper (Appendixes 1 and 2) by the originating unit to the project counsel and procurement specialist for comments. All comments should be sent to the originating unit within five working days from the receipt of the documents. Under prior review procedures, this is done before approving contract award. Under post review procedures it is done, ideally as soon as possible after contract award.

25. Consultation is not required for a contract below \$10,000,000; however, the originating unit may seek advice from COSO, or Controller's Department, on specific issues, or OGC on specific legal issues.

J. Authority Delegated to Directors, Sector Divisions

26. Except if the head of the originating unit has decided otherwise, directors of originating units can, without referring to the procurement committee, approve

- draft prequalification and bidding documents for contracts estimated below \$10,000,000;
- proposals or decisions to prequalify applicants for contracts estimated below \$10,000,000, even if such contracts are part of a package of contracts involving \$10,000,000 or more covered by a single invitation for prequalification or bids;
- proposals or decisions to award contracts valued below \$10,000,000 to bidders who submitted the lowest evaluated and substantially responsive bids, even if such contracts form part of a package of contracts involving \$10,000,000 or more covered by a single invitation for bids; and
- proposals or decisions to cancel and rebid a contract valued below \$10,000,000.

FOR THE PROCUREMENT COMMITTEE (NO-OBJECTION BASIS)

To Principal Director, Central Operations Services Office (3)
 Assistant General Counsel (concerned) (2)
 Originating Unit Director (1)

From [Originating Project Staff (concerned)]

Subject **Loan No./Project Name:**
 Subject/Contract Name:

A. Matter for Consideration

1. [Give a statement of the matter requiring procurement committee action.]

B. Background Information

2. [Give the information and data necessary for the procurement committee to understand the situation leading to the proposed award of contract or prequalification of firms or cancellation of bids and rebid. For proposed award of contract, provide a list containing all bids as received, the bid prices as opened, discounts offered, bids as corrected for arithmetical errors, as expressed in the currency of bid evaluation, and as evaluated by the borrower or EA. Present cost comparisons as indicated in para. 10 of the main text. Identify exchange rates used. This section is to be detailed and self-contained]

C. Issues

3. [All issues during the procurement process should be explained and fully addressed. Identify the issues that require procurement committee consideration; and state the views of the originating unit staff, project counsel, procurement specialist, and other staff involved. Append a copy of the written comments of the project specialist, project counsel, procurement specialist, and other staff. Representations received must also be explained and addressed fully. All relevant information must be included such that the procurement committee is in a position to make a fully informed decision. This section is to be detailed and self-contained.]

D. Recommendation

4. [Indicate the action recommended with justification.]

APPROVED:

(1) _____
(Director, sector division concerned)

(2) _____
(Assistant General Counsel)

(3) _____
Principal Director, COSO

Note: For nonconcurrency, leave adequate space for any comments, or reasons for refusal.

APPENDIXES:

Borrower's and EA's recommendation
Comments from project counsel
Comments from procurement specialist
Comments from any other staff
Any other relevant documents, including copies of any representations received.

cc: Members of the Procurement Committee
Director COS1 [or COS2 as appropriate]
Project counsel
Procurement specialist
Secretary of the Procurement Committee

FOR THE PROCUREMENT COMMITTEE

To Principal Director, Central Operations Services Office
Through [Originating unit director (concerned)]
From [Originating project staff (concerned)]
Subject **Loan No./Project Name:
Request for a Meeting of the Procurement Committee**

A. Matter for Consideration

1. [Give a statement of the matter requiring procurement committee action.]

B. Background Information and Relevant Facts

2. [Give the information and data necessary for the procurement committee to understand the situation leading to the proposed award of contract or prequalification of firms or cancellation of bids and rebid. For proposed award of contract provide a list containing all bids received, the bid prices as opened, discounts offered, bids as corrected for arithmetical errors, as expressed in the currency of bid evaluation, and as evaluated by the borrower or EA. Present cost comparisons as indicated in para. 10 of the main text. Identify exchange rates used. This section is to be detailed and self-contained]

C. Issues

2. [Explain in detail the issues involved and state the views of the project specialist, project counsel, procurement specialist and other staff involved. Append a copy of the written comments of the project specialist, project counsel, procurement specialist, and other staff. Representations received must also be appended, explained, and addressed fully. All relevant information must be included such that the procurement committee is in a position to make a fully informed decision.]

D. Recommendation

3. [Indicate the action recommended with justification.]

APPENDIXES:

Borrower's and EA's recommendation
Comments from project counsel
Comments from procurement specialist
Comments from any other staff
Any other relevant documents including copies of any representations received.

cc: Members of the Procurement Committee
 Director COS1 [or COS2 as appropriate]
 Project counsel
 Procurement specialist
 Secretary of the Committee